

28 May 2014

Mr Adam Yacono  
Manager  
Anti-Dumping Commission  
C/o Australian Customs and Border Protection Service  
Customs House  
1010 La Trobe Street  
DOCKLANDS VICTORIA 3008

**Public File**

Dear Mr Yacono

**Investigation into Hot Rolled Structural Sections exported from Japan, Korea, Taiwan and Thailand – OneSteel comments concerning Tung Ho Exporter Visit report**

Tung Ho Exporter Visit report

I refer to the Exporter Visit Report for Tung Ho Steel Enterprise Corporation (“THS”) recently placed on the electronic public file. By this submission, OneSteel Manufacturing Pty Ltd (“OneSteel”) seeks to highlight with the Anti-Dumping Commission (“the Commission”) its concerns with the treatment of items relevant to normal value determination for THS.

(i) Like goods

OneSteel submits that the Commission’s investigating team has erred in its comparison of models for like goods for the dumping margin calculation.

As indicated, OneSteel highlighted with the Commission prior to the exporter verification visits that the appropriate equivalent grade for HRS exported to Australia as sold on domestic markets (including Taiwan) was SM490A. The support for this assessment was based on an objective comparison of international standards that clearly shows that products sold to comply with AS3679.1 grade 300 are most closely alike to products that comply with grade SM490A. The assessment was further confirmed by the Customs and Border Protection’ previous assessment in Investigation 79, where the following was stated:

*Customs found the specifications of the exported grade RL (AS3679.1) and domestic grade HK (SM490A) to be very similar, and considers the grade HK (SM490A) is the most appropriate for comparison with the exported grade RL (3679.1)*

The investigating team's flawed assessment that AS/NZS 3679.1 grade 300 is most alike to grade SS400 appears to be based solely on claims made by THS that grade SS490A has ferroalloys added and that products produced to AS/NZS grade 300 doesn't.

*“THS did not consider it appropriate to group 3679G300 with SM490A, as the latter has ferroalloys added which increased the cost of that grade when compared to 3679G300<sup>1</sup>”.*

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<sup>1</sup> Section 4.2, THS Exporter Visit report, P. 22.

OneSteel submits that the THS claims in relation to ferroalloy additions are nothing more than a blatant attempt to induce the Commission to use a lower value domestic grade product for determination of normal value without any regard to the metallurgical realities governing the addition of alloys during the steelmaking process.

OneSteel advises that in order to produce AS/NZS 3679.1 Grade 300 to the relevant Australian Standard (meeting the required carbon equivalent (CE) and mechanical properties as well as achieving good weldability) a manganese level in the range of 0.8-1.4% is required in the steel. That level of manganese in steel produced from scrap cannot be achieved through residual manganese levels. A deliberate ferromanganese addition would be required at significant cost.

When this grade is produced through Whyalla Steelworks from iron ore, to meet the aim manganese of █% (1.6%max) a typical addition of around █ kg/heat is required at a cost in the region of \$█ /ton per tonne of steel. Production of this grade utilising scrap via an Electric Arc Furnace process may result in a slight reduction in ferroalloy additions due to the potential contribution of residual manganese present in the scrap but will still require a deliberate, significant ferroalloy addition involving an additional production cost of approximately \$█ /ton.

OneSteel totally rejects the implication from THS that no ferroalloys additions are made when producing AS/NZS 3679.1 Grade 300. However even if the claims by THS were accurate, the **cost** of goods is **not** a relevant test for whether the goods are alike. Rather, the appropriate test for likeness involves an examination of the end-use of the goods, their relevant performance requirements, and the similarity of standards they are produced to meet.

- Market (application) Likeness.

The scope of the Australian Standard provides a very good guide to the applications that the products are produced for.

For products produced to AS/NZS 3679.1:2010 the scope states clearly that the grades specified are suitable "For **general structural** and **engineering** applications ...are suitable for **welding**."

JIS 3101 grade SS400 is described as being suitable for "Hot rolled steels for **general structures**".

However JIS grade SM490A is described as being for " Hot Rolled for **welded structure steel**" and is clearly aligned with AS/NZS 3679.1 Grade 300 for market applications than JIS grade SS400.

- Performance Likeness.

As per OneSteel submission dated 6 May 2014, an objective comparison (in relation to strength and chemistry requirements) of internationally published standards clearly shows that the nearest like grade to ASNZS 3679.1-300 is SM490A.

For ease of reference, OneSteel includes a comparison table for assessment of nearest grade equivalents as per international standards.

Grade	Min Yield (MPa)	Chemistry Specifications (in max%)						Tensile (MPa)
		C	Si	Mn	P	S	CE	
SS400	215 to 245	Not specified (n/s)			0.050	0.050	n/s	400
AS3679.1- 300	280 to 320	0.25	0.50	1.60	0.040	0.040	0.44	440
Variance	-30%	Not comparable						-10%
<b>SM490A</b>	<b>315 to 325</b>	<b>0.20</b>	<b>0.55</b>	<b>1.65</b>	<b>0.035</b>	<b>0.035</b>	<b>0.44</b>	<b>490</b>
<b>AS3679.1-300</b>	<b>280 to 320</b>	<b>0.25</b>	<b>0.50</b>	<b>1.60</b>	<b>0.040</b>	<b>0.040</b>	<b>0.44</b>	<b>440</b>
Variance	11% to 2%	Most Like						+10%

OneSteel would like to draw to the attention of the Commission that a CE value is specified for both grades SM490A and AS3679.1-300 while it is not specified for grade SS400. In welding, the equivalent carbon content (CE) is used to understand how the different alloying elements affect hardness of the steel being welded. Hardness is related to the propensity for steel to crack after welding and thus CE is commonly used to determine weldability.

It is clearly evident from the table above that SM490A is the most like grade in terms of chemistry requirements for weldability and minimum yield strength, the two critical factors determining Hot Rolled Structural steels performance.

We submit that the Commission must exclude grade SS400 from the normal value calculations and include THS' domestic sales of grade SM490A in the like goods categories as the SM90A goods are most like to those exported to Australia on the basis of chemical composition, market applications and performance (strength and chemistry requirements).

(ii) Cost of ferroalloys

The THS Report indicates<sup>2</sup> that ferroalloys have been included in "other manufacturing overheads". The Commission contended that it did not seek a reallocation of these costs as they were considered "insignificant" in the total steel making cost. As illustrated above, however, there is a significant cost increment for products containing added ferroalloys.

Furthermore, the fact that these costs are included in manufacturing overheads means that some products that do not include ferroalloys in their composition have been allocated a percentage of costs applicable to ferroalloy consumption in the allocated manufacturing overheads. As the goods exported to Australia include ferroalloys and OneSteel deem these ferroalloy addition costs to be significant, the raw materials cost for like goods should include the ferroalloy expenses.

THS's cost-to-make HRS (AS/NZS 3679.1 - G300 and equivalent SM490A) requires review to include actual ferroalloy costs in the like goods.

(iii) Theoretical and actual weights

OneSteel notes that THS asserts that it does "not take advantage" of selling HRS in accordance with the tolerances allowed under applicable standards for the domestic and export markets.

<sup>2</sup> Section 6.3.3, P. 53.

Additionally, it is stated that THS aims to produce HRS where “the actual weight is close to the theoretical weight”.

OneSteel accepts that THS may make such an assertion but it is inconsistent with a detailed benchmarking analysis of Tung Ho product supplied to the Australian market. The benchmarking report produced in March 2011 analysed 13 different section sizes of the goods under consideration and examined 30 samples of each size. The analysis showed that for 10 of the 13 sections sizes either some or all of the products were below the minimum weight tolerance allowable under the standard.<sup>3</sup> The benchmarking report found that there was no evidence that Tung Ho were rolling to aim specification.<sup>4</sup>

The Commission has produced a Table in Section 4.4 of the THS Exporter Visit Report contrasting the weighted-average difference between theoretical and actual weights for domestic and export sales. It is stated by the Commission that “no significant differences between the theoretical and actual weights sold to Australia or on the Taiwanese market during the investigation period” was identified.

It is submitted that “insignificant” requires consideration in the context of the dumping margin determined for THS. OneSteel has communicated to the Commission that it is industry practice for steel producers to “roll light” (ie to minimum tolerance) in order to maximise yield.

THS sells its HRS in accordance with Japanese and American Standards where the allowable tolerances are +/- 4 to 5 per cent. For sales to Australia, the tolerances are +/- 2.5 per cent under AS/NZ 3679.1.

There is a difference of 1.5 to 2.5 per cent between the Australian and Japanese standards and it is important that THS’ normal value is adjusted upwards to account for the lighter goods sold on the domestic market compared to those exported to Australia (as was indicated by OneSteel prior to exporter visits).

#### (iv) Exclusion of related party sales

The Commission has excluded THS’s related party sales from the normal value assessment. The Commission undertook an analysis of gross and net invoice sales for THS’ related and unrelated party sales of like goods. The Commission indicated that there were some difficulties with the comparison due to related party sales having different credit terms, and rebates that applied.

However, the Commission determined that at the net invoice level “sales to unrelated parties are generally below those to related parties<sup>5</sup>”.

Section 269TAA(1) of the Customs Act specifies:

*“For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:*

- *there is any consideration payable for in respect of the goods other than price;*

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<sup>3</sup> Confidential Benchmarking Report p17-19

<sup>4</sup> Confidential Benchmarking Report p17

<sup>5</sup> Section 7.4 of THS Report, P. 68.

- *the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller;*
- *in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.”*

The Dumping and Subsidy manual provides further guidance. The Commission will seek to confirm whether there is any consideration received by the seller other than price, and whether the relationship between the parties affects the price. It is evident from the THS report that the THS price to related parties can be for extended periods. However, this of itself does not determine the sales as non-arms length transactions. Similarly, the payment of rebates does not discount the related party sales as non-arms length. The manual also states that “the mere fact that a rebate is paid is not in itself evidence that there is a compensatory arrangement under s.269TAA(2)(c).

The decision to treat related party sales as non-arms length requires the price to the related parties to be favourable when contrasted with the sales to unrelated parties. The Commission found that THS’ net sales to unrelated parties are generally below those to related parties, therefore it cannot be concluded that the related party sales were affected by the relationship between THS and its affiliated customers.

On this basis it is submitted that the related party sales are arms-length transactions and should be included in THS’ normal value calculations.

THS normal value calculations will therefore require review and re-assessment.

#### (v) Level of Trade

The Commission has not made a level of trade adjustment to THS’ normal value. In determining HRS’ normal value, the Commission has used domestic sales to distributors only, and has excluded sales to wholesalers/ retailers, end users and related party sales.

The basis for this approach is THS’ claim that the Australian importer, Sanwa is a distributor and that only domestic sales to distributors should be included in THS’ normal value.

The Commission examined THS’ domestic sales data and compared gross and net unit sales prices to the varying levels of trade by “model, customer and month, and examined the rebate structure of each level of trade”.<sup>6</sup> The analysis could not find any discernable price differences at the gross level. The Commission found that rebates at the differing levels of trade varied, and that THS’ customers at the distributor level usually receive a lower net price “which show no discernable pattern” with some prices being higher and, others lower.

It appears that the Commission then concluded, on the basis of the differing discounts and rebates, that there were net pricing differences between THS’ distributors and wholesalers/end users, supporting a request to include sales to distributors only.

OneSteel understands that Sanwa can receive different prices in the same month from Tung Ho, depending on the customer that it is selling to in Australia. This in effect means that Sanwa is buying multiple smaller parcels in any one month and it is likely that these smaller parcel volumes are similar to not only to distributors in Taiwan but also wholesalers and retailers.

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<sup>6</sup> Section 7.5 of THS Report, P.69.

OneSteel submits that there does not appear to be any consideration as to a comparison of volumes between the Australian importer (distributor) and the sales volumes purchased by THS' domestic distributors to establish whether the prices (subject to certain discounts and rebates) is reasonable. Importantly, however, OneSteel submits that the discounts and rebates applicable on the domestic market are not offered by THS for export sales and should not be the **sole** determining factor on whether to exclude sales to wholesalers/retailers from THS' normal value inclusive sales. That is, the discounts/rebates applicable to THS' domestic distributors follows negotiation with these parties, whereas the export sales do not attract any discounts or rebates (refer Section 5.2.2). It is therefore not reasonable to only consider THS' "net" domestic selling prices to distributors for normal value purposes as the export selling prices to Australia were below gross selling prices (i.e. dumped) before discounts and rebates were negotiated.

The Commission is requested to include THS' domestic sales to wholesalers/end-users in THS normal value calculations over the investigation period.

(vi) Credit terms

It is stated in the THS Report that THS' domestic sales payment terms for unrelated parties are letter of credit at sight of documents (i.e. no credit terms). For related parties, extended credit of 60 to 90 days occurs.

OneSteel included communications in its application Specifically Sanwa facsimile dated 30 May 2013) indicating that payment terms for imported sales were 120 days ex Bill of Lading ("BOL").

This would appear to contradict THS' claims and that an upward adjustment to THS' normal value for credit terms on export sales to Australia is required.

(vii) Domestic marketing charges

The Commission has made an adjustment to THS' normal value to allow for domestic marketing expenses that purportedly reflect travel expenses incurred in Taiwan that relate to unrelated customers.

OneSteel submits that THS would similarly have incurred travel expenses to Australia for meetings with Sanwa to sell steel products, including HRS. OneSteel submits that the claimed travel expenses cannot be isolated solely to THS' domestic sales of HRS and should therefore not be the subject of a downward adjustment to THS' normal value. Notwithstanding, it is curious that expenses incurred in supporting Sanwa in Australia and associated with THS' HRS sales in Australia have not been included as an upward adjustment to THS' normal value (and should be included).

(viii) Pricing Extras

The Commission advised that during the investigation it discovered that pricing extras apply both domestically and for Australian exports for goods of various non-standard physical characteristics. The Commission found that THS only applied pricing extras to larger height channels in the Australian market but charged higher prices for channel extras on their domestic market. The Commission also found THS that charged extras on the domestic market for H beams but didn't charge extras for H beams for exports to the Australian market.

It is unclear from the Exporters visit report whether or not the Commission has made an upward adjustment to account for the higher price extras for both channels and H beams that THS achieves on its domestic market versus exports to the Australian market.

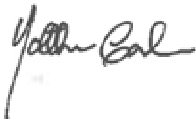
(ix) Conclusion

OneSteel requests the Commission to re-assess normal values for THS due to the following:

- the like goods included in THS' normal value calculations includes goods that are of a lesser quality and strength (i.e. SS400 grade) and are not comparable with the goods exported to Australia. THS' normal values require re-assessment to include THS' sales of Grade SM490A HRS;
- adjustment is required to reflect the difference in theoretical weight and actual weight (with THS' exports to Australia sold with a lower tolerance to THS' domestic sales);
- the cost of ferroalloys included in the like goods to be included in raw material costs (and not allocated as a manufacturing overhead);
- related party sales to be included in THS' normal value assessment as there is an absence of related party selling prices being affected by the relationship to THS;
- THS' normal value assessment should not be limited to THS sales to domestic distributors as there is no discernable gross price differential for THS' domestic sales at all levels;
- THS' export sales include 120 day payment terms and no adjustment has been made to reflect the difference with domestic sales where no credit is extended;
- The adjustment to THS' normal value for domestic travel expenses requires review to establish that the claimed travel relates solely to sales of HRS goods the subject of the application. Additional consideration is required of THS' travel expenses incurred during the investigation period relating to THS' sales to Sanwa for the goods under consideration (i.e. an upward adjustment to normal value is required).
- adjustment is required to reflect the difference in pricing extras for channels and H beams.

If you have any questions concerning this submission please do not hesitate to contact OneSteel's representative Mr John O'Connor on (07) 3342 1921 or Mr Matt Condon of OneSteel on (02) 8424 9880.

Yours sincerely



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